

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs February 20, 2007

**STATE OF TENNESSEE v. WILLIE L. HICKS**

**Direct Appeal from the Circuit Court for Wayne County  
No. 13968     Jim Hamilton, Judge**

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**No. M2006-01640-CCA-R3-PC - Filed on June 21, 2007**

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Petitioner, Willie L. Hicks, appeals the circuit court's summary dismissal of his second pro se petition for writ of habeas corpus. Following our review of the parties' briefs and applicable law, we dismiss the appeal.

**Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed**

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID H. WELLES and ALAN E. GLENN, JJ., joined.

Willie L. Hicks, Jr., Clifton, Tennessee, *pro se*.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General, T. Michel Bottoms, District Attorney General; and C. Daniel Lins, Assistant District Attorney General, for the appellee, the State of Tennessee.

**OPINION**

In May 1995, Petitioner pled guilty to one count of first degree murder and one count of second degree murder. In 2004, Petitioner filed his first petition for writ of habeas corpus relief. The circuit court dismissed the petition, and this Court affirmed the dismissal. *Willie L. Hicks, Jr. v. Kevin Myers*, No. E2004-02921-CCA-R3-HC, 2005 WL 2043832, at \*1 (Tenn. Crim. App. at Knoxville, Aug. 22, 2005), *perm. app. denied* (Tenn. Dec. 5, 2005). Petitioner filed a second petition for habeas corpus relief in March 2006. The circuit court summarily dismissed the petition on March 30, 2006, and an order was entered April 6, 2006. Petitioner filed an untimely notice of appeal on June 7, 2006. In this appeal, Petitioner argues that he is entitled to habeas corpus relief because 1) he was not given a proper amount of time to reply to the State's motion to dismiss and memorandum of law in support of the motion; 2) the circuit court failed to grant his motion for findings of fact, law, or conclusions; 3) his sentences are illegal and void, and 4) failure to grant habeas corpus relief will result in manifest injustice because his guilty pleas were unknowingly and involuntarily entered.

The State argues that the appeal is untimely because Petitioner failed to file the notice of appeal within 30 days of the judgment appealed from as required by Tennessee Rule of Appellate Procedure 4(a). The State acknowledges that “in all criminal cases, the ‘notice of appeal’ document is not jurisdictional and the filing of such document may be waived in the interest of justice.” Tenn. R. App. P. 4(a). Nonetheless, the State asserts that justice is not served by waiving the timeliness requirement in this case since Petitioner offers no explanation for his delayed notice of appeal. The State argues that even if waiver is granted, Petitioner is still not entitled to relief because the judgments against him are not void, and the claims he now raises have previously been adjudicated.

Pursuant to Rule 4, Tennessee Rules of Appellate Procedure, a notice of appeal document shall be filed within thirty days after entry of the judgment from which an appeal is sought. This Court may review untimely appeals and determine whether the notice requirement should be waived. Tenn. R. App. P. 4. Waiver is not automatic and should only occur when “the interest of justice” mandates waiver. To hold otherwise, by summarily granting waiver whenever confronted with untimely notices, renders the thirty-day requirement a legal fiction and circumvents the rule. *See Michelle Pierre Hill v. State*, No. 01C01-9506-CC-00175, 1996 WL 63950, at \*1 (Tenn. Crim. App., at Nashville, Feb. 13, 1996), *perm. to appeal denied* (Tenn. May 28, 1996). In determining whether waiver is appropriate, this Court shall consider the nature of the issues for review, the reasons for the delay in seeking relief, and other relevant factors presented in each case. *Ronald McCray v. State*, No. W2006-00053-CCA-R3-HC, 2006 WL 1063684, at \*1 (Tenn. Crim. App., at Jackson, April 21, 2006).

In his first two grounds on appeal, Petitioner asserts that he is entitled to habeas corpus relief because he was not given a proper amount of time to reply to the State’s motion to dismiss, and because the circuit court failed to grant his motion for findings of fact, law, or conclusions. Neither claim addresses the voidness of his judgments of conviction, therefore, neither claim is proper in a petition for habeas corpus relief. *See Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000); *Archer v. State*, 851 S.W.2d 157, 163 (Tenn. 1993). Furthermore, the procedure followed by the habeas court was proper. A trial court is not required, as a matter of law, to grant the writ or conduct an inquiry into the allegations contained in the petition if the petitioner fails to state a cognizable claim for relief. T.C.A. § 21-21-109.

In his third issue on appeal, Petitioner contends that his fifteen year sentence has expired, his sentences are illegal, and the judgments against him are void. He argues that his sentences are void because they cannot legally be accomplished since each sentence was ordered to be served consecutively to the other and he “can’t serve count one until he expires count two, and can’t serve count two until he expires count one.” This claim was previously adjudicated in his first petition for habeas corpus relief. *Willie L. Hicks, Jr. v. State*, No. E2004-02921-CCA-R3-HC, 2005 WL 2043832, at \*1 (Tenn. Crim. App., at Knoxville, Aug. 22, 2005), *perm. app. denied* (Tenn. Dec. 5, 2005). This previous adjudication bars Petitioner from raising the issue again in the habeas corpus petition now under review. *Pearson v. State*, No. E2005-02606-CCA-R3-HC, 2006 WL 1439613, at \*2 (Tenn. Crim. App., at Knoxville, May 25, 2006), *perm. app. denied* (Tenn. Oct. 2, 2006) (citing *Myers v. State*, 462 S.W.2d 265, 269 (1970); *Young v. State*, 539 S.W.2d 850, 854 (Tenn. Crim.

App. 1976); *Long v. State*, 510 S.W.2d 83, 87 (Tenn. Crim. App. 1974)). Petitioner's remaining claim that his guilty pleas were involuntary and unknowing also lacks merit because, even if proven true, Petitioner's convictions would merely be rendered voidable, not void, and a voidable judgment is not subject to attack through a habeas corpus petition. *See Passerella v. State*, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994).

It is manifestly clear by the issues raised and the entire record that the interest of justice does not mandate waiver of the timely filing of the notice of appeal. The record reflects that Petitioner was aware of the date the circuit court dismissed the petition, nonetheless, he failed to file a motion to excuse the late-filed notice of appeal with this Court. Nor does Petitioner offer an explanation in his brief for his failure to timely file his notice of appeal. Because Petitioner has failed to adhere to the timeliness requirements of the notice of appeal, this appeal is dismissed.

### **CONCLUSION**

For the foregoing reasons, this appeal is dismissed.

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THOMAS T. WOODALL, JUDGE